



# **MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 46**

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## **FABRICATION SERVICES**

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This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

### **1. FABRICATION SERVICES IN GENERAL**

"Fabrication services" includes those services which result in the production of tangible personal property or which constitute a step in a process or series of operations which result in the production of tangible personal property that did not originally exist. A process whereby raw materials, components, sub-assemblies or parts are assembled to create a new functioning unit will constitute fabrication services. Charges for fabrication services are subject to the sales or use tax whether the purchaser or a third party furnishes the materials.

The following are typical of the services which will be regarded as subject to tax. This list is not intended to be all-inclusive, and failure to include a particular service in this list should not be construed as creating a presumption that the service is not subject to tax. Doubtful cases should be referred to Maine Revenue Services for a definitive ruling.

- Production services which normally are included in the sale price of tangible personal property
- Production of audio or video tapes
- Production of advertising layouts
- Production of computer software or programs
- Production of painting of art or portraits
- Production of aerial photographs
- Printing or imprinting of tangible personal property
- Production of signs
- Production of new wearing apparel
- Production or custom sawing of lumber
- Production, cutting, shaping, drilling or forming of structural steel or sheet metal
- Firing of ceramics
- Assembling of kits to produce a completed item
- Mixing of concrete

Crushing of stones, gravel or other construction materials  
Chipping of logs  
Taxidermy

## **2. REPAIR SERVICES**

"Fabrication services" does not include the repair, refurbishing or reconditioning of tangible personal property to refit it for the use for which it was originally produced. Charges for repair services are not subject to tax if separately stated from the charge for repair parts or other tangible personal property furnished in connection with the repair service.

## **3. INSTALLATION SERVICES**

"Fabrication services" does not include the charge for attaching, affixing or applying a completed item of tangible personal property to other tangible personal property, or to real property. Such charges are non-taxable if separately stated from the sale price of the tangible personal property being installed.

## **4. EXEMPT SALES OF FABRICATION SERVICES**

The sales or use tax does not apply to sales of fabrication services in the following situations:

- a. Fabrication of exempt commodities.** The tax does not apply to charges for fabrication of tangible personal property where a sale to the consumer of the tangible personal property being fabricated is exempt or otherwise not subject to tax. Some examples of exempt fabrication services are fabrication of machinery or equipment for use directly and primarily in production of tangible personal property for later sale or lease, and production or processing of food products for home consumption.
- b. Fabrication for exempt organizations.** The sales or use tax is not applicable to sales of fabrication services to the federal government, this State or political subdivisions of this State (such as counties, cities, or towns) or any agency of any of the above governments; or to any other entity (such as a school, church or hospital) which has been issued an exemption certificate by Maine Revenue Services.
- c. Fabrication of tangible personal property for resale.** The sales or use tax does not apply to fabrication of tangible personal property for a purchaser who will resell it in the form of tangible personal property, unless the subsequent resale of the property will be at casual sale. Persons making sales of fabrication services for resale should require the purchaser to furnish a resale certificate in substantially the form set forth the Rule No. 301.
- d. Additions to real property.** Fabrication services" does not include the transformation of tangible personal property by a person who incorporates the transformed

property into real property. Fabrication of tangible personal property that is to be incorporated into real property by the fabricator will be treated as follows:

- i. Passage of title prior to incorporation into real property.** Where the contractor passes title to the tangible personal property before he incorporates it into the real property, fabrication services will be subject to the tax. For example, a cabinetmaker contracts to fabricate and install kitchen cabinets. If the contract provides that the purchaser takes title to the cabinets before installation, the full amount of the sale, including fabrication services, will be subject to the tax. A sheet metal shop contracts to fabricate and install ductwork into real property. If the contract provides that the purchaser takes title to the ductwork before installation, the full amount of the sale will be subject to the tax. Under both examples above, installation service will not be subject to the tax if separately stated on the invoice to the customer.
- ii. Passage of title after incorporation into real property.** Where the contractor passes title to the tangible personal property after he incorporates it into the real property, his fabrication services are not subject to the tax. (It will be assumed that title to the tangible personal property does not pass until after it has been installed, unless specifically stated in the contract.) For example, a cabinetmaker contracts to build and install kitchen cabinets. If there is no title provision in the contract, or if the contract states that title will pass after installation, the cabinetmaker will be liable for tax on the tangible personal property. He will also be liable for the tax on any fabrication services which he may purchase. The same will be the case if a sheet metal shop contracts to fabricate ductwork and install it into real property.

Please note that charges for fabrication of tangible personal property which will be incorporated into real property are subject to tax unless the property is incorporated by the fabricator.

**e. Casual or isolated sales of fabrication services.** Sales of fabrication services made by a person who does not engage in making such sales in the ordinary course of repeated and successive transaction of a like character do not fall within the definition of "retail sale" and are accordingly exempt.

## **5. PURCHASES BY FABRICATORS**

**a. Machinery and equipment.** The Sales and Use Tax Law provides an exemption for purchases of machinery and equipment and repair parts for machinery and equipment used directly and primarily in the production of tangible personal property for sale or lease. This exemption is applicable not only when the tangible personal property being produced is for ultimate sale or lease by the producer, but also when the tangible personal property is being fabricated for ultimate sale or lease by another. In order to qualify for exemption on the basis of use in the provision of fabrication services, machinery or equipment must meet all of the following qualifications:

i. **The property produced must be intended ultimately for sale or lease,** not for use by the owner. For example, use of printing equipment to produce catalogs for a department store which supplies the materials is not qualifying use, because the catalogs are not intended for sale or lease by the store.

ii. **The property produced must be intended for sale or lease as tangible personal property,** not as real estate. For example use of machinery to fabricate structural steel for a contractor who will erect it is not qualifying use because the steel is not intended for sale or lease in the form of tangible personal property.

iii. **The machinery or equipment must be used directly in production** of tangible personal property, not in procurement or storage operations or any other activities which are simply incidental, convenient or remote to production.

iv. **The machinery or equipment must be used primarily (more than 50% of the time) in production** which meets all of the above qualifications, or in production of tangible personal property intended ultimately for sale or lease by the producer. Machinery or equipment which is used 50% or more of the time in fabricating tangible personal property which will not be sold or leased is subject to tax.

b. **Ingredient or component part.** Items which will be physically incorporated in tangible personal property and actually pass to the purchaser of fabrication services as an ingredient or component part of tangible personal property are an exempt purchase by the fabricator as being, in effect, for resale, whether the property is intended ultimately for sale or lease or for use by the customer. Some examples of purchases which would be exempt are staples used by a printer to assemble catalogs; nails and glue used by a cabinetmaker to assemble cabinetry; and sheet metal screws used by a sheet metal shop to fabricate ductwork.

Please note that purchases of items which will become an ingredient or component part of fabricated property **which will be incorporated into real estate by the fabricator** are subject to tax.

c. **Consumed or destroyed.** The Sales and Use Tax Law also provides an exemption for tangible personal property which is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale or lease, other than lease for use in this State. Fuel and electricity are specifically excepted from this exemption, other than separately metered electricity consumed in an electrolytic process and fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale. In order to qualify for this exemption, an item which is "consumed or destroyed" must have an actual physical life expectancy of less than one year in the use to which it is applied without regard to obsolescence.

In order to be exempt under this provision, items must be consumed or destroyed directly and primarily in production meeting the qualifications set forth in paragraph a, "Machinery and equipment", above.

**6. ADDITIONAL INFORMATION.**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1065  
AUGUSTA, ME 04332-1065  
TEL: (207) 624-9693  
TTY: (207) 287-4477**

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**ATTACHMENT #1**  
**Excerpts taken from 36 M.R.S.A.**

**36 §1752. Definitions**

**2-C. Fabrication services.** "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. "Fabrication services" does not include the production of tangible personal property if a sale to the consumer of the tangible personal property so produced would be exempt or otherwise not subject to tax under this Part or if the services are purchased by an exempt entity.

**7-B. Machinery and equipment.** "Machinery and equipment" means machinery, equipment and parts and attachments for machinery and equipment, but excludes foundations for machinery and equipment and special purpose buildings used to house or support machinery and equipment.

**11. Retail sale.** "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

**13. Sale.** "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

**14. Sale price.** "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;

(3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;

(4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;

**17. Tangible personal property.** "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity.

**17-A. Taxable service.** "Taxable service" means:

E. Fabrication services;

### **36 §1760. Exemptions**

No tax on sales, storage or use shall be collected upon or in connection with:

**31. Machinery and equipment.** Sales of machinery and equipment for use by the purchaser directly and primarily in either the production of tangible personal property, which property is intended to be sold or leased ultimately for final use or consumption, or the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof.

74. Property used in production. Sales of tangible personal property, other than fuel or electricity, that becomes an ingredient or component part of, or that is consumed or destroyed or loses its identity directly and primarily in either the production of tangible personal property for later sale or lease, for use in this State, or the production of tangible personal property pursuant to a contract with the United States Government or any agency of the United State Government. Tangible personal property is "consumed or destroyed" or "loses its identity" in that production if it has a normal physical life expectancy of less than one year as a usable item in the use to which it is applied.